

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

NAN VOLLETTE, et al.

Plaintiffs,

v.

BILL WATSON, et al.

Defendants.

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CIVIL ACTION NO. 2:12cv231

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION FOR LEAVE TO SUPPLEMENT
MOTION FOR SUMMARY JUDGMENT

Defendants, Bill Watson, Elizabeth Baker, William Sugg, Jack Benzie, Yolanda Natividad, Candace Mabry, and Mack Keese, by counsel, seek leave to supplement their Motion for Summary Judgment. Defendants' Motion arises following plaintiffs' depositions where they testified contrary to the declarations submitted in opposition to summary judgment.

Determining the type of search to which plaintiffs were subject is material to the Court's determination of whether defendants violated plaintiff's constitutional rights and/or are entitled to qualified immunity. In support of summary judgment, Deputies Baker and Mabry testified that they conducted only standard strip searches. See Affidavit (Doc. No. 31 Ex. 31-14) and Supplemental Affidavit of Elizabeth Baker (Doc. No. 36, Ex. 36-1); Affidavit of Candace Mabry (Doc. No. 31, Ex. 31-16). In their opposition to Summary Judgment, plaintiffs did not dispute that Baker and Mabry instructed them to disrobe, squat and cough, a standard strip search, but attested that when they bent over and squatted, the deputies "appeared" to be looking at their private parts. Based on that fact, plaintiffs asserted they underwent visual body cavity searches,

requiring more than “reasonable suspicion” to be lawful under *Leverette v. Bell*, 247 F.3d 160, 168 (4th Cir. 2001).

At deposition, plaintiffs contradicted their declarations, effectively admitting they were subject only to standard strip searches. Plaintiffs’ newly minted testimony casts grave doubt on their earlier claims, that they were made “to expose [their] anal and vaginal cavities for visual inspection.” *Id.* at 166 n. 3 (citation omitted). Thus, plaintiffs’ deposition testimony supports defendants’ position that the searches, based on reasonable suspicion, were constitutional. Because on the significance of plaintiffs’ testimony, defendants seek leave to supplement their Motion for Summary Judgment. See Proposed Supplement to Motion for Summary Judgment, attached hereto as Ex. A.

For these reasons, defendants respectfully request this Court to grant their Motion for Leave to Supplement Motion for Summary Judgment.

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ELIZABETH BAKER
WILLIAM SUGG
JACK BENZIE
YOLANDA NATIVIDAD
CANDACE MABRY
MACK KEESE

/s/ Jeff W. Rosen

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CERTIFICATE OF SERVICE

I hereby certify that on the 9 day of November, 2012, I electronically filed the foregoing *MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION FOR LEAVE TO SUPPLEMENT MOTION FOR SUMMARY JUDGMENT* with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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